ble of enhancing the value of the right of way,[14] and local assessments on such property would seem to be well within the constitutional limits of legislative power.

RECOVERY OF MONEY LOANED TO PERSON HAVING NO LEGAL CAPACITY TO CONTRACT. — By the early English law, a person lending money to another who was under a disability had no legal remedy.[1] But in equity the fiction developed that if money was advanced to an infant,[2] an unsupported wife,[3] or a lunatic,[4] and was in fact spent for necessaries, the lender occupied the place of the tradesman who supplied them.[5] This theory of "subrogation" was recognized by text writers [6] and was applied in several decisions in this country.[7] It was even expanded to cover the analogous case of corporations borrowing *ultra vires* and expending the proceeds in paying their legal liabilities.[8] But lately the theory has fallen into disrepute,[9] and in England its application to corporations borrowing *ultra vires* has been flatly denied.[10] It seems strange, therefore, that a recent English decision in a case in which the lender sought to recover money advanced to a lunatic and used for necessaries should have not only adopted the theory but carried it to its logical extreme. *In re Beavan*, [1912] 1 Ch. 196.[11] Although the lending bank was denied all compensation for its services, yet it was actually permitted to recover

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[14] Chatham County Commissioners *v.* Seaboard Air Line Ry. Co., 133 N. C. 216, 45 S. E. 566 (stock law). In State, Paterson & Hudson River R. Co. *v.* City of Passaic, 54 N. J. L. 340, 23 Atl. 945, it was found as a fact that the easement was benefited by a sewer. *Contra*, Allegheny City *v.* Western Pennsylvania R. Co., *supra*.

[1] Darby *v.* Baucher, 1 Salk. 278; Earle *v.* Peale, 1 Salk. 386.

[2] Marlow *v.* Pitfeild, 1 P. Wms. 558.

[3] Harris *v.* Lee, 1 P. Wms. 482; Jenner *v.* Morris, 3 De G., F. & J. 45; Deare *v.* Souter, L. R. 9 Eq. 151.

[4] Williams *v.* Wentworth, 5 Beav. 325; Wentworth *v.* Tubb, 1 Y. & C. Ch. 171.

[5] It would seem that this doctrine of subrogation has not been applied in favor of one who has loaned money to a drunkard; but a recovery in quasi contracts of so much of the loan as has been spent for necessaries is permitted. Haneklan *v.* Felchlin, 57 Mo. App. 602. See Gore *v.* Gibson, 13 M. & W. 623, 626; McCrillis *v.* Bartlett, 8 N. H. 569, 572.

[6] 3 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 1300; SHELDON, SUBROGATION, 2 ed., 365.

[7] Kenyon *v.* Farris, 47 Conn. 510. See Walker *v.* Simpson, 7 Watts & S. (Pa.) 83. *Cf.* Leuppie *v.* Osborn, 52 N. J. Eq. 637, 29 Atl. 433.

[8] *In re* Cork, etc. Ry. Co., L. R. 4 Ch. 748; Blackburn Building Society *v.* Cunliffe, Brooks & Co., 22 Ch. D. 61; Wells *v.* Town of Salina, 71 Hun (N. Y.) 559, 25 N. Y. Supp. 134.

[9] See *In re* Rhodes, 44 Ch. D. 94, 105, 107. In De Brauwere *v.* De Brauwere, 203 N. Y. 460, 96 N. E. 722, the subrogation theory adopted by the court below, 69 N. Y. Misc. 472, 126 N. Y. Supp. 221, was expressly rejected and the same decision reached on quasi-contractual grounds. See 24 HARV. L. REV. 306; 25 HARV. L. REV. 473. In Skinner *v.* Tirrel, 159 Mass. 474, 34 N. E. 692, the theory was repudiated and the lender denied all relief. But the case may, perhaps, be distinguished on the ground that the loan was made to the wife on her own credit.

[10] *In re* Wrexham, etc. R. Co., [1899] 1 Ch. 440.

[11] It is interesting to note that Neville, J., who decided this case, advocated as counsel the application of the subrogation doctrine to corporations borrowing *ultra vires* in the case of *In re* Wrexham, etc. R. Co., *supra*.

interest where the claims of the creditors to which it was thus subrogated were interest bearing.

That a person lending money to another who is under a disability should have some means of recovering his advances seems obvious, for otherwise incapacitated people might suffer severe deprivation though possessed of considerable resources, for want of credit to enable them to supply their immediate needs. But the remedy by subrogation, besides being fictitious and circuitous, has two marked defects. If the borrower pays cash for his necessaries, no debt arises to which the lender can be subrogated; yet surely he is just as worthy of relief. If the borrower becomes insolvent, and the lender happens to be subrogated to the rights of secured creditors, he receives a wholly undeserved priority.[12] It would seem wiser, therefore, to base the lender's right to recover on quasi-contractual principles, and argue that the borrower has been enriched and has a duty to reimburse the person to whom this enrichment is due.[13] In analogous cases, a surety on an infant's note for necessaries who has paid the debt,[14] and one who has paid a debt for necessaries at the infant's request, may recover in assumpsit.[15] If the lender's recovery is limited to money actually spent for necessaries, it can make no substantial difference to the borrower whether his liability be for money borrowed or for the price of the necessaries;[16] and the objection on which the early decisions rest, that the lender might encourage the borrower to squander his funds, ceases to apply.[17] Since, moreover, the obligation to repay is raised by the law regardless of any contractual relation,[18] the technical argument of the old cases [19] that a contract, void when made, cannot later become binding simply because the money is spent for necessaries, has no force.[20]

LIABILITY OF LESSOR RAILROAD FOR ACTS OF LESSEE. — Unlike ordinary corporations, railroads are not permitted to lease their properties to one another without express legislative assent.[1] Where a road is operated under an unauthorized lease, the lessee is regarded as the agent of the lessor, and the latter is held to strict accountability for all its

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[12] *Cf. In re* Wrexham, etc. R. Co., *supra*.

[13] See *In re* Rhodes, *supra*, *per* Cotton, L. J., 105, *per* Lindley, L. J., 107; KEENER, QUASI CONTRACTS, 19–21; WILLISTON, SALES, §§ 24, 34, 41, 48.

[14] Conn *v.* Coburn, 7 N. H. 368; Haine's Admr., *v.* Tarant, 2 Hill Law (S. C.) 400.

[15] Randall *v.* Sweet, 1 Den. (N. Y.) 460.

[16] See Kenyon *v.* Farris, *supra*, 517; Leuppie *v.* Osborn, *supra*, 640.

[17] See Darby *v.* Boucher, *supra*; Earle *v.* Peale, *supra*.

[18] See Trainer *v.* Trumbull, 141 Mass. 527, 530; *In re* Rhodes, *supra*, 105, 107. *Cf.* Sceva *v.* Treu, 53 N. H. 627; Sawyer *v.* Lufkin, 56 Me. 308.

[19] See Darby *v.* Boucher, *supra*.

[20] Even if the liability be regarded as contractual, there is no good reason why under the modern doctrine that such contracts are voidable rather than void, the contract should not cease to be voidable when the money has been expended for necessaries. See WILLISTON, SALES, § 24.

[1] Public service corporations, as a rule, may not lease, sell, or consolidate their properties without legislative consent. See NOYES, INTERCORPORATE RELATIONS, § 177.